

**REMARKS**

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-30 are pending the present application. Claim 1 is the sole independent claim.

**SPECIFICATION**

Applicants hereby confirm their willingness to cooperate with the Examiner in the identification and correction of further minor errors within the specification. Applicants respectfully submit, however, that they are not presently aware of any such errors that would require correction.

**REJECTIONS UNDER 35 U.S.C. § 102**

Claims 1 and 2 stand rejected under 35 U.S.C. 102(e) as being anticipated by Moon et al. (U.S. Patent Application Publication No. 2003/0097629). The Applicants respectfully traverse this rejection for the reasons detailed below.

Independent claim 1 recites “a method of transmitting or retransmitting a packet in a communication system comprising:

determining a modulation and coding scheme (MCS) and corresponding resource allocation as a function of at least one of a determined past, a determinable current, and a future statistic of at least one of channel conditions and resource allocation; and

transmitting a coded modulated version of said packet in said communication system according to said MCS.” (Emphasis Added)

Moon is directed to a data transceiver apparatus and method in a CDMA mobile communication system and particularly to an apparatus and method for transmitting and receiving data using a variable modulation technique during retransmission.<sup>1</sup> Moon states “The AMCS is a technique for adaptively changing a modulation technique and a coding rate of a channel encoder according to a variation in the downlink channel environment.”<sup>2</sup> Further, Moon discloses “The node B predicts the downlink channel environment based in the received SNR information, and designated a proper modulation technique and coding rate according to the predicted value.”<sup>3</sup>

However, the cited portions of Moon quoted above and cited by the Examiner do not disclose determining resource allocation. Therefore, Applicants respectfully submit that Moon fails to disclose, teach or fairly suggest determining “resource allocation” as recited in claim 1.

In light of the above, Applicants request that the rejection to independent claim 1 and dependent claim 2 under 35 U.S.C. § 102(e) be withdrawn.

#### **ALLOWABLE SUBJECT MATTER**

Applicants note with appreciation the Examiner’s indication that claims 3-30 are objected to as being dependent from a rejected based claim, and would, therefore, be allowable if rewritten in independent form incorporating limitations of all included claims. As reflected by the remarks above, however, the Applicants respectfully maintain that the remaining claims are also allowable for at least the same reasons as independent claim 1 and that no such rewriting of claims 3-30 is warranted at this time.

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<sup>1</sup> Lee, paragraph [0003].

<sup>2</sup> Moon, paragraph [0007], lines 1-4.

<sup>3</sup> Moon, paragraph [0007], lines 7-10.

**CONCLUSION**

In view of above remarks, reconsideration of the outstanding rejection and allowance of the pending claims is respectfully requested.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) hereby petition(s) for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$120.00 extension fee herewith.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone John A. Castellano, at the number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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